

LEWIS  
ANDROCA  
LLP

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3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

40 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004-4429

Susan M. Freeman AZ State Bar No. 004199  
Email: sfreeman@lrlaw.com  
Rob Charles NV State Bar No. 006593  
Email: rcharles@lrlaw.com  
John Hinderaker AZ State Bar No. 018024  
Email: JHinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA Commercial Mortgage Company,

USA Capital Realty Advisors, LLC,<sup>1</sup>

USA Capital Diversified Trust Deed Fund,  
LLC,

USA Capital First Trust Deed Fund, LLC,<sup>2</sup>

USA Securities, LLC,<sup>3</sup>

Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR<sup>1</sup>  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>2</sup>  
Case No. BK-S-06-10729-LBR<sup>3</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**DECLARATION OF EDWARD M.  
BURR IN SUPPORT OF MOTION  
TO FURTHER EXTEND DEADLINE  
TO FILE OBJECTION TO  
ALLOWANCE OF CLAIMS; AND  
CERTIFICATE OF SERVICE**

Date: January 22, 2009  
Time: 9:30 a.m.

I Edward M. Burr, hereby declare under penalty of perjury that:

I am a principal with Sierra Consulting Group, LLC ("Sierra").

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.

<sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 21, 2007.

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1 I submit this declaration on behalf of the Motion to Further Extend Deadline to File  
2 Objection to Allowance of Claims (the "Motion") [DE 6582] filed by the USACM  
3 Liquidating Trust (the "USACM Trust"), as successor to USA Commercial Mortgage  
4 Company ("USACM").

5 Sierra previously served as financial adviser to the Official Committee of  
6 Unsecured Creditors of USA Commercial Mortgage Company ("Committee").

7 I assisted the Committee in analyzing facts concerning these jointly administered  
8 bankruptcy cases, including scheduled liabilities and proofs of claim. The Committee  
9 ceased to exist on March 12, 2007, the Effective Date of the Debtors' Third Amended  
10 Joint Chapter 11 Plan of Reorganization ("Plan"), and I am now assisting the USACM  
11 Liquidating Trust ("USACM Trust") created under the Plan.

12 I make the following declaration based upon my personal knowledge, and upon the  
13 records of the Debtors and the USACM Trust described in this declaration.

14 I understand that under the Plan as modified by the Confirmation Order, the  
15 deadline for interested parties to object to Allowance of Claims and Equity Interests was  
16 90 days after the Effective Date, or June 10, 2007. That deadline was further extended to  
17 October 9, 2007 by a June 29, 2007 order [DE 4097] after a hearing held on June 22, 2007.  
18 The deadline was further extended to October 15, 2007 by a bridge order that was  
19 approved at a hearing held on August 23, 2007 [DE 4625]. On October 11, 2007, the  
20 Court entered an order [DE 4971] extending the deadline to February 12, 2008. On  
21 January 22, 2008, the Court entered an order [DE 5709] extending the deadline to June  
22 12, 2008. On May 13, 2008, the Court entered an order [DE 6347] extending the deadline  
23 to October 10, 2008. On December 2, 2008, the Court entered an Order [DE 6636]  
24 extending the deadline to February 9, 2009.

25 To date there have been seven administrative claims filed totaling \$2,016,499.08;  
26 103 priority claims filed totaling \$7,751,955.91; 1,676 secured claims filed totaling

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\$297,052,436.44; 1232 unsecured claims filed totaling \$627,644,519.30; and 79 unknown claims filed totaling \$649,390.57. Additional claims were scheduled by Debtors.

To date, the Trust has filed:

- Objections to 1667 secured claims that have been sustained and reclassified as unsecured in aggregate of \$296,160,362.79.
- Objections to 76 priority claims that have been sustained and reclassified as unsecured in aggregate of \$5,122,243.
- One objection to the status of an administrative claim totaling \$14,248 that has been sustained and reclassified as unsecured.
- Objections to 66 “Wrong Debtor” claims in the amount of \$12,098,062. All but one of those objections were sustained or a stipulation withdrawing the subject claim was approved;
- Objections to three claims not enforceable against USACM in the amount of \$75,503,580; one of these claims totaling \$12,841,680 remains unresolved.
- Objections to 147 claims for lack of documentation in the amount of \$19,708,808; 23 of these objections to claims totaling \$1,920,750 were withdrawn due to claimants sending in sufficient supporting document and 124 objections were sustained totaling \$17,788,058.
- Objections to 34 claims on miscellaneous grounds in the amount of \$39,394,064. Two of these objections were sustained totaling \$3,502,383; 17 objections have stipulated withdrawals totaling \$4,884,078; 5 claims totaling \$6,416,532 have orders allowing the claim; and ten objections totaling \$24,591,071 are unresolved.
- A total of 806 objections to Direct Lenders claims in the amount of \$60,980,695, principally on loans paid in full by the borrowers. The Court has sustained these objections or the claimants have agreed that they are not

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1 making a claim based upon the paid loan in question, with the exception of  
2 the Persevere at Galleria objection which will be heard on January 22, 2009.

- 3 • A stipulation has been executed and an order signed which provides for the  
4 disallowance of the Spectrum and Weddell proofs of claim in the amount of  
5 \$125,000,000.

6 The Trust prosecuted objections to claims, including the Loans known as Hasley  
7 Canyon; Fiesta Beaumont \$2.4 million; Ashby Financial Company \$7,200,000; Glendale  
8 Tower Partners, LLC; Golden State Investments II; 5252 Orange, LLC; Midvale Market  
9 Place, LLC; Urban Housing Alliance – 435 Lofts Loan; Boise/Gowen 93, LLC; LCG  
10 Gilroy, LLC; J Jireh's Corporation; One Point Street, LLC – HFA North Yonkers; Goss  
11 Road Loan; Elizabeth May Real Estate Loan; Slade Development; Wasco Investments,  
12 LLC; I-40 Gateway West, LLC 2nd; Cottonwood Hills, LLC; Standard Property  
13 Development, LLC; Meadow Creek Partners; I-40 Gateway West; Gateway Stone; and  
14 Palm Springs Marquis Hotel. The Trust has other adversary proceedings pending that  
15 constitute claims objections.

16 Further, as the Trust has received information from claimants, it has entered into  
17 stipulations for the allowance and disallowance of priority and unsecured claims.  
18 Conversely, some claimants have stipulated to either withdraw their claims or have them  
19 reclassified as unsecured claims upon discussion with the USACM Trust's counsel.

20 The remaining direct lender claims relate to loans that (1) fully performed, but  
21 involve diverted principal; (2) partially performed; (3) are non-performing or still  
22 outstanding. The extent to which those loans perform and/or the direct lenders may be  
23 compensated from the sale of collateral securing the loans has a major impact on the  
24 amount of the claims. The Trustee is handling these claims on a loan by loan basis.

25 Not all of the claims objections can be resolved through motions. The Court has  
26 ordered that the Trust's objection to claim 1366 of Los Valles Land & Golf, LLC be

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1 consolidated with a related adversary proceeding filed by the Trust against Los Valles and  
2 its guarantor, Dan S. Palmer, Jr.

3 USACM Trust has 99 direct lender loans on record for which investors have filed a  
4 proof of claim asserting money owed. To date USACM Trust has objected to proofs of  
5 claims based on 27 of these loans for having been repaid in full. There are 3 additional  
6 paid in full loans that also have amounts scheduled for unremitted principal. USACM  
7 Trust is intending on objecting to the proofs of claims based on these loans, USACM Trust  
8 will be objecting to the difference between the amount asserted on the proof of claim and  
9 the predetermined amount allowed as an unsecured claim for the subject loan. There will  
10 be an additional 69 direct lender loans outstanding after these loans are resolved, the  
11 majority of these loans are being serviced by Compass Financial. USACM Trust has been  
12 unable to obtain the status of these outstanding loans from Compass Financial.

13 All of the direct lender claims have been sorted on a loan by loan basis; USAM  
14 Trust will begin to work through the direct lender claims, as information becomes  
15 available from Compass, to see if there is a valid basis for a claim, and if so, in what  
16 amount. The USACM Trust is trying not to file an objection to any claim on a particular  
17 direct loan until it is prepared to meet and confer with all of the claimants on that loan  
18 under the alternative dispute resolution mechanism provided by the Plan.

19 I make this declaration under penalty of perjury of the laws of the United States of  
20 America on December 22, 2008.

21 By /s/ Edward M. Burr  
22 Edward M. Burr  
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1 Copy of the foregoing served on December 22, 2008, via e-mail or first class postage  
2 prepaid U.S. Mail to all parties listed on the Post Effective Date Service List on file with  
3 this Court:

4 /s/ Carrie Lawrence  
5 Carrie Lawrence  
6 Lewis and Roca LLP  
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